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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. PT-2007-2595

OLIVEROS ARIAS VIGIL
852 Pasteur Street
Hanford, CA 93230

OAH No. 2009080219

Applicant for Psychiatric Technician License

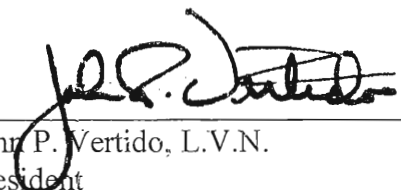
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on April 16, 2010.

IT IS SO ORDERED this 17th day of March, 2010.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

OLIVEROS ARIAS VIGIL
Hanford, California

Respondent.

Case No. PT-2007-2595

OAH No. 2009080219

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Fresno, California, on December 3, 2009.

Patrick M. Kenady, Deputy Attorney General, represented the complainant, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians.

Steven Bassoff, Attorney at Law,¹ represented the respondent, Oliveros Arias Vigil.

The record was closed on December 3, 2009.

FACTUAL FINDINGS

APPLICATION FOR LICENSURE

1. By an application dated April 8, 2008, Oliveros Arias Vigil, the respondent, applied to the Board of Vocational Nursing and Psychiatric Technicians for licensure as a psychiatric technician. In the application, he disclosed that he had been convicted of crimes. The board denied the application, and respondent appealed.

¹ Steven Bassoff, Attorney at Law, 1220 S Street, Suite 100, Sacramento, California 95814.

CONVICTIONS

2. Complainant alleges that, in or about 1997, in the Superior Court of California for the County of Monterey, respondent was convicted of violating Penal Code section 594, subdivision (a), vandalism. Complainant offered no evidence in support of this allegation, and respondent denied it. He testified that he thought this allegation must be the result of some mistake.

3. On February 7, 2005, in the Superior Court of California for the County of Kings, respondent was convicted of violating Health and Safety Code sections 11550, subdivision (a), unlawfully using and being under the influence of a controlled substance, a misdemeanor. The conviction was on a plea of guilty. The court suspended the imposition of sentence and placed respondent on formal probation for five years. As a condition of probation, the court required respondent to pay fines and fees totaling \$769. As further conditions the court required respondent to obtain substance abuse counseling, abstain from the use of alcohol and controlled substances, and submit to chemical testing. The court imposed other standard conditions of probation.

4. The circumstances that gave rise to the February 7, 2005, conviction occurred on January 29, 2005, when an officer of the Hanford Police Department arrested respondent for possession of methamphetamine.

5. On August 5, 2005, in the Superior Court of California for the County of Kings, respondent was convicted of violating Penal Code sections 594, subdivision (a), vandalism, a misdemeanor. The conviction was on a plea of nolo contendere. Respondent paid \$1,190 in restitution for the damage he had done to a police department patrol car. The court sentenced respondent to serve seven days in the county jail and fined him \$120.

6. The circumstances that gave rise to the August 5, 2005, conviction occurred on March 20, 2005. Respondent had been drinking. An officer of the Hanford Police Department determined that respondent was unable to care for himself, and the officer took him into custody. During a pat down, the officer found respondent to be in possession of 11 pills that later were determined to be amitriptyline, a controlled substance. The officer placed respondent in his patrol car, and respondent began kicking the interior of the car. He damaged a window and window frame.

7. On October 24, 2005, in the Superior Court of California for the County of Kings, respondent was convicted of violating Vehicle Code sections 23152, subdivision (b), driving under the influence of alcohol, a misdemeanor. The conviction was on a plea of guilty. The court suspended the imposition of sentence and placed respondent on formal probation for five years. As a condition of probation, the court required respondent to pay fines and fees totaling \$1,595. As further conditions the court required respondent to serve five days in the county jail, obtain counseling, complete a three-month program concerning driving under the influence, abstain from the use of alcohol and controlled substances, and

submit to chemical testing. The court imposed other standard conditions of probation. In a subsequent proceeding, the court converted \$1,465 of the fine to 14 days in jail.

8. The circumstances that gave rise to the October 24, 2005, conviction occurred on September 11, 2005. Respondent drove a vehicle while having a blood alcohol level of 0.08.

9. The crimes of which respondent was convicted are crimes that are substantially related to the qualifications, functions, or duties of a psychiatric technician.

RESPONDENT'S HISTORY OF ALCOHOL CONSUMPTION AND DRUG USE

10. Respondent is 31 years old. He testified that he started drinking regularly when he was 23 years old. That would have been in 2001. Respondent said he started using methamphetamine in 2004 and used it for approximately nine months. During that time, he continued to drink.

11. Respondent said he has not used methamphetamine since 2005 and that he stopped drinking alcohol in 2007 when he enrolled in a psychiatric technician program. Respondent said he is in a relationship with a woman he plans to marry. Her father was an alcoholic, and respondent does not want to cause her any concern about drinking. Respondent declares that he has stopped drinking.

MITIGATION AND EXTENUATION

12. Respondent suffers from spina bifida, scoliosis, and arthritis. On March 20, 2005, the day of the incident that resulted in respondent's August 5, 2005, conviction for damaging a police patrol car, respondent was drinking in a bar. He was experiencing pain, and a friend gave him some amitriptyline tablets. He took some of them. When the officer took respondent into custody and placed him in the patrol car, he was under the influence of a combination of alcohol and amitriptyline. That was when he kicked and damaged the patrol car.

13. Respondent should not have taken a prescription drug that had not been prescribed for him. Also, he should not have taken amitriptyline while consuming alcohol unless a pharmacist or doctor told him it was safe to do that. Nevertheless, the circumstances are somewhat extenuating. There is no evidence that amitriptyline is a recreational drug, and respondent took it in an attempt to alleviate pain.

REHABILITATION

14. Respondent lives with his parents in Hanford.

15. In 2004, respondent was associating with a crowd of people who used methamphetamine, and he began using it. Respondent testified that he became concerned

that methamphetamine “was causing me to become someone I am not.” He said he no longer uses methamphetamine and no longer associates with people who do.

16. Respondent said he paid the fines and fees the court imposed as conditions of his probations. He attended a drug rehabilitation program for six months but was not permitted to continue with it after he was convicted on the vandalism charge on August 5, 2005. He attended Alcoholics Anonymous meetings as the court required. He completed the court ordered program concerning driving under the influence.

17. In April of 2007, respondent enrolled in a psychiatric technician program at West Hills Community College in Coalinga. If one is on probation for a crime, one cannot begin the second semester of that program. Respondent applied to the court for early termination of his probations. By orders of August 17, 2007, the court granted respondent’s applications as to both probations. Thus, as of that date, he no longer was on probation.

18. Respondent was graduated from the psychiatric technician program on April 25, 2008.

19. During respondent’s first semester in the psychiatric technician program, he did two clinical rotations – one in a nursing home for children with Down syndrome and one in a nursing home for children who are mentally retarded. During respondent’s second semester, he did three clinical rotations – one at Porterville Developmental Center, one at Coalinga State Hospital, and one at Atascadero State Hospital.

20. After respondent was graduated, he worked as a pre-licensed psychiatric technician at Coalinga State Hospital for nine months. Respondent worked the night shift, from 11:00 p.m. to 7:00 a.m., five to seven days a week. One may not work as a pre-licensed psychiatric technician for longer than nine months.

21. Respondent said he would have been hired at Coalinga State Hospital as a psychiatric technician if he had been licensed.

22. Respondent testified that he likes helping people.

23. Respondent is unemployed. He testified that, after he finds employment, he plans to be married.

LEGAL CONCLUSIONS

GROUND TO DENY RESPONDENT’S APPLICATION

1. By reason of the matters set forth in Findings 3 through 9, it is determined that respondent has been convicted of crimes that are substantially related to the qualifications,

functions, and duties of a psychiatric technician. Thus, pursuant to Business and Professions Code section 480, subdivision (a)(1), there are grounds to deny respondent's application.

2. By reason of the matters set forth in Findings 3 through 9, it is determined that respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a psychiatric technician. Those convictions, if sustained by a licensed psychiatric technician, would be grounds for disciplinary action. Thus, pursuant to Business and Professions Code section 480, subdivision (a)(3), Business and Professions Code section 4511, subdivision (d), and Business and Professions Code section 4521, subdivision (f), there are grounds to deny respondent's application.

3. By reason of the matters set forth in Findings 3 and 12, it is determined that respondent, without lawful authority, self-administered controlled substances. That act, if committed by a licensed psychiatric technician, would be grounds for disciplinary action. Thus, pursuant to Business and Professions Code section 480, subdivision (a)(3), Business and Professions Code section 4511, subdivision (d), and Business and Professions Code section 4521, subdivision (a)(4), there are grounds to deny respondent's application.

4. By reason of the matters set forth in Findings 3, 7, 8, and 12, it is determined that respondent used alcohol and controlled substances to an extent or in a manner dangerous to himself and others. That act, if committed by a licensed psychiatric technician, would be grounds for disciplinary action. Thus, pursuant to Business and Professions Code section 480, subdivision (a)(3), Business and Professions Code section 4511, subdivision (d), and Business and Professions Code section 4521, subdivision (a)(5), there are grounds to deny respondent's application.

5. By reason of the matters set forth in Findings 3, 7, and 8, it is determined that respondent was convicted of criminal offenses involving the consumption of alcoholic beverages and a controlled substance. Those convictions, if sustained by a licensed psychiatric technician, would be grounds for disciplinary action. Thus, pursuant to Business and Professions Code section 480, subdivision (a)(3), Business and Professions Code section 4511, subdivision (d), and Business and Professions Code section 4521, subdivision (a)(6), there are grounds to deny respondent's application.

IT IS APPROPRIATE TO ISSUE A PROBATIONARY LICENSE

6. The board's rehabilitation criteria are found at California Code of Regulations, title 16, section 2522. Based on an application of those criteria to the record in this case, it is determined that respondent has made substantial progress toward rehabilitation.

7. Respondent's behavior in 2005 indicated a serious disregard for his own safety and for the safety of others. Nevertheless, it is important to recognize that that behavior was confined to a period of approximately one year. The events that gave rise to the three convictions occurred between January 29 and September 11, 2005. According to respondent, he had been using methamphetamine for a few months before January of 2005. It also is

important to recognize that respondent's conduct did not involve dishonesty or intent to do harm and that none of the convictions was a felony conviction. While respondent created a substantial potential for doing harm to the public, there was no actual harm other than the damage he did to the patrol car.

8. There is no evidence that respondent has engaged in other irresponsible behavior. Respondent satisfied the conditions of his probations and obtained early terminations of his probations. It has been more than four years since the most recent conduct that gave rise to a conviction. It has been over two years since the court ordered early termination of respondent's probations. Thus, there has been substantial experience with respondent's rehabilitation since he was relieved of the threat of further criminal proceedings. In respondent's application for licensure, he disclosed his convictions, and he has been cooperative with the board.

9. It is determined that the public interest can be protected with the issuance of a probationary license.

ORDER

Respondent's application for licensure as a psychiatric technician is granted. The license is immediately revoked. The revocation, however, is stayed for three years, and a probationary license shall be issued on the following conditions:

1. Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of all violations and alleged violations of the law to the board within five days of occurrence. To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty days of the effective date of this decision unless the board determines that fingerprints were previously submitted to the board. Respondent shall submit to the board a recent 2" x 2" photograph of himself or herself within thirty days of the effective date of this decision. If respondent is under a criminal court order, including probation or parole, and violates the order, the violation shall be a violation of these probation conditions.
2. Respondent shall fully comply with the conditions of probation established by the board and shall cooperate with representatives of the board in monitoring and investigating respondent's compliance with the probation program.
3. Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations, and verifications of actions the board or its representatives require. These reports or declarations shall contain statements relative to respondent's compliance with the conditions of the board's program. Respondent shall immediately execute all release of information forms the board or its

representatives require. In the first report, respondent shall provide a list of all states and territories in which he or she has ever been licensed as a vocational nurse, practical nurse, psychiatric technician, or registered nurse. During the period of probation, respondent shall provide information regarding the status of each license and any change in license status. Respondent shall inform the board if he or she applies for or obtains a new nursing or psychiatric technician license during the period of probation. Respondent shall provide a copy of this decision to the regulatory agency in every state and territory in which he or she has applied for or holds a vocational nurse, practical nurse, psychiatric technician, or registered nurse license.

4. Respondent shall notify the board, in writing, within five days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the board may be deemed a violation of these probation conditions.

5. Respondent shall notify the board, in writing, within five days, if he or she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation period. If respondent resides or practices outside of California, the period of probation shall automatically be extended for the same period respondent resides or practices outside of California. Respondent shall provide written notice to the board within five days of any change of residency or practice. Respondent shall notify the board, in writing, within five days, on respondent's return to California.

6. Respondent shall appear in person at meetings as directed by the board or its designated representatives.

7. When employed or applying for employment in any capacity in any health care profession, respondent shall notify respondent's employer or prospective employer of the probationary status of respondent's license. Notification to a current health care employer shall occur no later than the effective date of this decision. Respondent shall notify any prospective health care employer of respondent's probationary status prior to accepting employment. Respondent shall provide each employer and prospective employer with a copy of this decision and a copy of the accusation in this matter and shall cause each employer and prospective employer to write to the board to acknowledge receipt of copies of the decision and accusation. The term health care profession includes, but is not limited to: licensed vocational nurse, psychiatric technician, registered nurse, medical assistant, paramedic, emergency medical technician, certified nursing assistant, home health aide, and all other ancillary technical health care positions. Respondent shall cause each health care employer to submit to the board all performance evaluations and any other employment related reports as required by the board. Respondent shall notify the board, in writing, of any difficulty in securing employer reports within five days of such an event. Respondent shall notify the

board, in writing, within five days of any change in employment status. Respondent shall notify the board, in writing, if respondent is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. Respondent shall work in respondent's licensed capacity in the state of California. This practice shall consist of no less than six continuous months each year and no less than twenty hours per week. Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a board approved continuing education course except as approved, in writing, by the board. Respondent shall work only on a regularly assigned, identified, and predetermined work site and shall not work in a float capacity except as approved, in writing, by the board.

9. Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the board of the supervision provided to the respondent while employed. Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the board.

10. Respondent, at his or her expense, shall enroll in and successfully complete a course or courses substantially related to the violation or violations no later than the end of the first year of probation. The coursework shall be in addition to that required for license renewal. The board shall notify the respondent of the course content and number of contact hours required. Within thirty days of the board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. Completing such a course of study will satisfy this requirement only if the board approved the course, in writing, before respondent enrolled in it. Within thirty days of respondent's successful completion of the course or courses, respondent shall submit original completion certificates to the board.

11. Respondent shall, at all times, including during any period of suspension, maintain an active, current license with the board. If an initial license must be issued or a license is reinstated, probation shall not commence until the board issues a license. Respondent must complete the licensure process within two years from the effective date of the board's decision. Should respondent's license expire, by operation of law or otherwise, on renewal or reinstatement, respondent's license shall be subject to all conditions of this probation not previously satisfied.

12. During probation, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the conditions of probation, respondent may request permission to surrender his or her license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion as to whether to grant the request without further hearing. If the board formally accepts a tender of the license, respondent will no longer be subject to the conditions of probation. Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history. A licensee who surrenders his or her license may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the board's formal acceptance of the tender of the license: Three years for a license surrendered for any reason other than a mental or physical illness or one year for a license surrendered because of a mental or physical illness.

13. If respondent violates the conditions of probation, the board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation, the probationary period shall automatically be extended and shall not expire until the board has acted on the accusation or petition.

14. Within sixty days of the effective date of this decision, respondent shall submit to a physical examination by a physician of his choice who meets minimum criteria established by the board. The physician must be licensed in California and board certified in family practice, internal medicine, or a related specialty. The purpose of this examination shall be to determine respondent's ability to perform all professional duties with safety to himself and to the public. Before the examination, respondent shall provide the examining physician with a copy of this decision. Respondent shall pay the cost of the examination. Respondent shall cause the physician to complete a written medical report on a form provided by the board. The physician shall submit the report to the board within ninety days of the effective date of this decision. If the physician finds that respondent is not physically fit to practice or can safely practice only with restrictions, the physician shall notify the board, in writing, within five working days. If the physician determines that respondent is not physically fit to practice or can safely practice only with restrictions, the board shall notify respondent in writing of the examining physician's determination and shall order him to cease practicing or to restrict his licensed activities. Respondent shall comply with this condition until the board notifies him in writing that it is satisfied with his fitness to practice safely. Respondent shall document his compliance with such an order in whatever manner the board requires.

15. Within five days of the effective date of this decision, respondent shall begin attending a chemical dependency support group, for example, Alcoholics Anonymous, Narcotics Anonymous, or Nurse Support Group. Respondent shall submit verified documentation of his attendance with each quarterly report. Respondent shall continue attending during the entire term of probation.

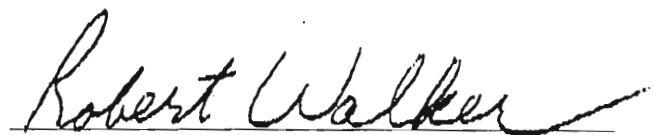
16. Respondent shall completely abstain from the use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and shall completely abstain from the use or possession of dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

17. Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

18. Respondent shall immediately submit to biological fluid testing at his cost, on request by the board or its designee. There will be no confidentiality in test results. The party interpreting the results shall immediately report any positive result to the board and to respondent's current employer.

19. On respondent's successful completion of probation and satisfaction of all other conditions and requirements for licensure, the board will issue an unrestricted license to him.

DATED: January 4, 2010

A handwritten signature in black ink that reads "Robert Walker". The signature is fluid and cursive, with a long horizontal stroke at the end.

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. PT-2007-2595

13 **OLIVEROS ARIAS VIGIL**
14 **852 Pasteur Street**
15 **Hanford, California 93230**

STATEMENT OF ISSUES

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Statement of
19 Issues solely in her official capacity as the Executive Officer of the Board of Vocational Nursing
20 and Psychiatric Technicians ("Board"), Department of Consumer Affairs:

21 2. On or about May 5, 2008, the Board received an application for a psychiatric
22 technician license from Oliveros Arias Vigil ("Respondent"). On or about April 8, 2008,
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on December 16, 2008.

25 **STATUTORY AND REGULATORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 4511 provides, in pertinent part, that
27 the Board may deny licensure if the applicant committed any act which, if committed by a
28 licensed psychiatric technician, would be grounds for disciplinary action.

1 4. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds
3 that the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action which a board is permitted to take following the
7 establishment of a conviction may be taken when the time for appeal has elapsed, or
8 the judgment of conviction has been affirmed on appeal, or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a subsequent
10 order under the provisions of Section 1203.4 of the Penal Code.

11

12 (3) Done any act which if done by a licentiate of the business or
13 profession in question, would be grounds for suspension or revocation of license.

14 The board may deny a license pursuant to this subdivision only if the
15 crime or act is substantially related to the qualifications, functions or duties of the
16 business or profession for which application is made . . .

17 5. Code section 4521 states, in pertinent part:

18 The board may suspend or revoke a license issued under this chapter [the
19 Psychiatric Technicians Law (Bus. & Prof Code section 4500, et seq.)] for any of the
20 following reasons:

21 (a) Unprofessional conduct, which includes but is not limited to any of
22 the following:

23

24 (4) Obtain or possess in violation of law, or prescribe, or except as
25 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
26 himself or herself or furnish or administer to another, any controlled substance as
27 defined in Division 10 (commencing with Section 11000) of the Health and Safety
28 Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing
with Section 11000) of the Health and Safety Code, or any dangerous drug as defined
in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
injurious to himself or herself, any other person, or the public or to the extent that the
use impairs his or her ability to conduct with safety to the public the practice
authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of
records concerning prescription, possession, or consumption of any of the substances
described in paragraphs (4) and (5), in which event the record of the conviction is
conclusive evidence of the conviction. The board may inquire into the circumstances
surrounding the commission of the crime in order to fix the degree of discipline.

. . . .

///

1 (f) Conviction of any offense substantially related to the qualifications,
2 functions, and duties of a psychiatric technician, in which event the record of the
3 conviction shall be conclusive evidence of the conviction. The board may inquire
4 into the circumstances surrounding the commission of the crime in order to fix the
5 degree of discipline . . .

6 6. Code section 4523 states:

7 A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge substantially related to the qualifications, functions and
9 duties of a psychiatric technician is deemed to be a conviction within the meaning of
10 this article. The board may order the license suspended or revoked or may decline to
11 issue a license, when the time for appeal has lapsed, or the judgment or conviction
12 has been affirmed on appeal or when an order granting probation is made suspending
13 the imposition of sentence, irrespective of a subsequent order under the provisions of
14 Section 1203.4 of the Penal Code allowing the person to withdraw his plea of guilty
15 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
16 the accusation, information, or indictment.

17 7. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
18 administer, or furnish a controlled substance for himself."

19 8. California Code of Regulations, title 16, section 2578, states, in pertinent part:

20 For the purposes of denial, suspension, or revocation of a license pursuant
21 to Division 1.5 (commencing with Section 475) of the Business and Professions
22 Code, a crime or act shall be considered to be substantially related to the
23 qualifications, functions or duties of a licensed psychiatric technician if to a
24 substantial degree it evidences present or potential unfitness of a licensed psychiatric
25 technician to perform the functions authorized by his license in a manner consistent
26 with the public health, safety, or welfare. Such crimes or acts shall include but not be
27 limited to those involving the following:

28

(f) Any crime or act involving the sale, gift, administration, or furnishing
of 'narcotics or dangerous drugs or dangerous devices' as defined in Section 4022 of
the Business and Professions Code.

CONTROLLED SUBSTANCE AT ISSUE

9. "Methamphetamine" is a Schedule II controlled substance as designated by Health
and Safety Code section 11055, subdivision (d)(2).

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1 FIRST CAUSE FOR DENIAL

2 (Criminal Convictions)

3 10. Respondent's application is subject to denial pursuant to Code sections 4511, 480,
4 subdivision (a)(1), and 480, subdivision (a)(3), in that Respondent was convicted of crimes which
5 are substantially related to the qualifications, functions, and duties of a psychiatric technician and
6 which would constitute grounds for discipline against him pursuant to Code section 4521,
7 subdivision (f), were he a licentiate of the Board, as follows:

8 a. In or about 1997, in the criminal proceeding titled *People v. Oliveros Arias Vigil*
9 (Super. Ct. Monterey County, 1997, Case No. MS158876A), Respondent was convicted by the
10 court of violating Penal Code section 594, subdivision (a) (vandalism). The circumstances of the
11 crime are as follows: On or about July 30, 1997, Respondent broke a light pole at a mall located
12 in Salinas, California.

13 b. On or about February 7, 2005, in the criminal proceeding titled *People v. Oliveros A.*
14 *Vigil* (Super. Ct. Kings County, 2005, Case No. 05CM0406), Respondent pled guilty to violating
15 Health and Safety Code section 11550, subdivision (a) (unlawfully using and being under the
16 influence of a controlled substance, a misdemeanor). The circumstances of the crime are as
17 follows: On or about January 29, 2005, an officer with the Hanford Police Department responded
18 to Martin Luther King Elementary School. Upon arrival, the officer made contact with
19 Respondent. The officer asked Respondent if he had any weapons, drugs, or needles on his body.
20 Respondent stated that he wished he had drugs and would smoke them right now if he could, and
21 later, consented to a search of his person. The officer "patted" Respondent down and located a
22 glass methamphetamine pipe and a bindle of crystal in Respondent's pockets. The officer
23 conducted a preliminary drug test on the bindle of crystal and determined that it was
24 methamphetamine. The officer arrested Respondent for possession of methamphetamine and
25 transported him to the Kings County jail. After arriving at the jail, Respondent admitted to the
26 officer that he was under the influence of methamphetamine, that he was an addict, and that he
27 used the drug every day.

28 ///

1 c. On or about August 5, 2005, in the criminal proceeding titled *People v. Oliveros*
2 *Arias Vigil* (Super. Ct. Kings County, 2005, Case No. 05CM2188), Respondent was convicted on
3 his plea of nolo contendere to violating Penal Code section 594, subdivision (a) (vandalism, a
4 misdemeanor). The circumstances of the crime are as follows: On or about March 20, 2005, an
5 officer with the Hanford Police Department was dispatched to the area of Davinci and Galileo in
6 the City of Hanford. Upon arrival, the officer located Respondent and observed that
7 Respondent's eyes were red and watery, he had a strong odor of alcohol on his breath, his speech
8 was slurred, and he had an unsteady gait. The officer determined that Respondent was unable to
9 care for his own safety and the safety of others and took him into custody. During a pat down and
10 weapons search, the officer located 11 pills in Respondent's coin pocket and asked him about the
11 pills. Respondent stated "none of your fucking business". The officer seized the pills (the pills
12 were later determined to be amitriptyline, a controlled substance), and placed Respondent in his
13 patrol car. While in route to the Kings County jail, Respondent began kicking the rear of the
14 patrol vehicle, resulting in damage to the window and window frame. Respondent was later
15 arrested for violations of Penal Code sections 647, subdivision (a), and 594, subdivision (b)(3)
16 (vandalism causing damage of \$400 or more), and Code section 4230 (unlawful possession of a
17 controlled substance).

18 d. On or about October 24, 2005, in the criminal proceeding titled *People v. Oliveros*
19 *Arias Vigil* (Super. Ct. Kings County, 2005, Case No. 05CM4308), Respondent pled guilty to
20 violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol, a
21 misdemeanor). The circumstances of the crime are as follows: On or about September 11, 2005,
22 Respondent unlawfully drove a vehicle while having 0.08 percent and more, by weight, of alcohol
23 in his blood.

24 SECOND CAUSE FOR DENIAL

25 (Self-Administration of Controlled Substances)

26 11. Respondent's application is subject to denial pursuant to Code sections 4511 and 480,
27 subdivision (a)(3), in that Respondent committed an act which would constitute grounds for
28 discipline against him pursuant to Code section 4521, subdivision (a)(4), were he a licentiate of

1 the Board, as follows: On or about January 29, 2005, Respondent self-administered the
2 controlled substance methamphetamine without lawful authority therefor, as set forth in
3 subparagraph 10 (b) above.

4 **THIRD CAUSE FOR DENIAL**

5 **(Use of Controlled Substances and Alcoholic Beverages to an Extent**
6 **or in a Manner Dangerous or Injurious to Oneself or Others)**

7 12. Respondent's application is subject to denial pursuant to Code sections 4511 and 480,
8 subdivision (a)(3), in that Respondent committed acts which would constitute grounds for
9 discipline against him pursuant to Code section 4521, subdivision (a)(5), were he a licentiate of
10 the Board, as follows: On or about January 29, 2005, and September 11, 2005, Respondent used
11 the controlled substance methamphetamine and alcoholic beverages to an extent or in a manner
12 dangerous or injurious to himself and others, as set forth in subparagraphs 10 (b) and (d) above.

13 **FOURTH CAUSE FOR DENIAL**

14 **(Criminal Convictions Involving Use of**

15 **Controlled Substances and Alcoholic Beverages)**

16 13. Respondent's application is subject to denial pursuant to Code sections 4511 and 480,
17 subdivision (a)(3), in that Respondent committed acts which would constitute grounds for
18 discipline against him pursuant to Code section 4521, subdivision (a)(6), were he a licentiate of
19 the Board, as follows: On or about February 7, 2005, and October 24, 2005, Respondent was
20 convicted of criminal offenses involving the use of controlled substances and consumption of
21 alcoholic beverages, as set forth in subparagraphs 10 (b) and (d) above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Denying the application of Oliveros Arias Vigil for a psychiatric technician license;
2. Taking such other and further action as deemed necessary and proper.

DATED: July 8, 2009



TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant